

## PUBLIC UTILITIES COMMISSION

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September 13, 1996

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VIA FEDERAL EXPRESS

Office of the Secretary  
Federal Communications Commission  
1919 M St., N.W. Room 222  
Washington, D.C. 20554


Re: CC Docket No. <sup>95</sup>96-116

Gentlemen:

Please find enclosed for filing an original plus nine copies of the COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in the above-referenced docket.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed postage pre-paid envelope.

Yours truly,

  
Patrick S. Berdge  
Attorney for California

PSB:cdl

Enclosures

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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )

CC Docket No. 95-116

Telephone Number Portability )

RM 8535

**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA  
ON THE NOTICE OF PROPOSED RULEMAKING**

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September 13, 1996

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## **I. INTRODUCTION**

The People of the State of California and the Public Utilities Commission of the State of California ("California" or "CPUC") hereby respectfully submit these reply comments to the Federal Communications Commission ("FCC" or "Commission") on the Further Notice of Proposed Rulemaking ("NPRM") on Costs and Cost Recovery for Long-term Number Portability ("LNP").

In these comments, California restates its support for allocation of shared number portability costs based on a carrier's active end-user assigned numbers. We urge close examination of carrier claims that network modernization and "advancement costs" should be considered direct costs of number portability, and we oppose suggestions to exempt carriers from number portability requirements if costs are not deemed recoverable. We also oppose calls by many commenters for a nationally-mandated and derived end-user charge for number portability. Although we welcome the FCC's guidance on competitively neutral allocation of number portability costs, we support proposals to leave the recovery of these costs from carriers to the discretion of the states. Finally, we dispute Pacific's claim that when a cost is deemed "exogenous" it is automatically recoverable. States should retain authority to determine if a cost actually is exogenous, as well as the method of recovering such cost under any relevant state price cap mechanisms.

## **II. SHARED INDUSTRY COSTS**

### **A. Allocate Shared Costs Based On Active End-User Numbers**

In the NPRM, the FCC proposed an allocation of shared number portability costs based on a carrier's gross telecommunications revenues, minus charges paid to other carriers.<sup>1</sup> In its initial comments, Pacific Bell ("Pacific") modifies the FCC's proposal by suggesting that shared industry costs should be allocated based on retail revenues, less payments to and received from other carriers. If payments received from other carriers are not excluded, Pacific argues, then the revenues are taxed twice--once when sold to an end user and again when paid to the upstream carrier. The CPUC disagrees.

California opposes Pacific's suggestion to exclude payments received from other carriers because it would defeat the purpose of subtracting payments to other carriers in the first place. Such an adjustment could relieve some carriers from a higher allocation of shared industry costs by excluding access charge revenue. Consequently, California reiterates its support for an alternative allocation mechanism, based on a carrier's active end-user assigned numbers, which would avoid squabbles over adjustments to each carrier's gross telecommunications revenues.

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<sup>1</sup> NPRM, ¶ 213.

### **III. DIRECT CARRIER-SPECIFIC COSTS**

#### **A. Further Scrutiny Is Required To Delineate Direct And Indirect Carrier-Specific Costs**

The NPRM defines carrier-specific costs as those costs "directly related to providing number portability" and distinguishes these "category 2" costs from carrier-specific costs not directly related to number portability ("category 3" costs) such as the costs of network upgrades necessary to implement a database method.<sup>2</sup>

Pacific claims that direct carrier-specific costs should properly include switch upgrades to receive LNP software and handle increased capacity, upgrades to SS7 Links and other signaling system enhancements to accommodate LNP functions, and "advancement costs" from incurring network modernization earlier than planned due to portability. GTE presents similar arguments that network modification and upgrades solely to accommodate LNP should be considered direct costs rather than indirect costs and argues for recovery of advancement costs. GTE further states that if these costs are not recoverable, carriers should be excluded from LNP requirements.

In response to the suggestions of Pacific and GTE, California cautions that further scrutiny of many of these costs is required before determining whether they may legitimately be categorized as carrier-specific category 2 costs, rather than category 3 costs. Advancement costs in particular may not be

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<sup>2</sup> NPRM, ¶ 208.

entirely justifiable as category 2 costs because network modernizations will likely provide benefits to a carrier beyond number portability capability. Before a cost is labeled category 2, further analysis is required to determine whether the cost is related primarily to LNP, or whether it provides other network benefits as well and falls more appropriately into category 3.

Furthermore, California vehemently disagrees with GTE's suggestion that carriers should be exempted from LNP requirements simply because some costs are not deemed recoverable. California notes that the Telecommunications Act of 1996 ("the 1996 Act") and FCC rules implementing the 1996 Act already establish specific exemption procedures for certain carriers. Any exemptions from long-term portability requirements are properly dealt with pursuant to those provisions.

**B. Direct Carrier Costs Should Be Partially Pooled And Partially Borne By Individual Carriers**

The NPRM offered two potential methods for allocating carrier-specific costs--either carriers could bear their own costs, or carriers could pool costs and then be reallocated a portion of these pooled costs.<sup>3</sup> In the recently-filed comments, parties are split in their support of these two opposing methods. California notes this split and suggests that our proposal for carriers to bear a portion and pool the remainder may provide an effective compromise between

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<sup>3</sup> NPRM, ¶ 221.

these opposing viewpoints. In support of this partial pooling proposal, California reiterates that it is difficult to choose between these two opposite policies without knowing the relative costs that incumbent carriers will bear compared to the costs new entrants will incur. Our proposal also balances competitive neutrality with an incentive to minimize costs.

#### **IV. COST RECOVERY**

##### **A. Cost Recovery From Carriers Should Be Left To the States**

In the NPRM, the FCC asked whether it should prescribe the cost recovery mechanism for incumbent local exchange carriers ("LECs") to recover their shared and/or direct number portability costs from either end users or other carriers.<sup>4</sup>

In response to this query, several carriers propose end-user surcharges to recover shared and/or carrier specific costs, levied on a per access line basis, or in some instances a per-call charge collected by interexchange carriers from customers of interexchange toll service. Although Pacific supports carriers bearing their own direct costs, it also supports an end-user charge which would automatically pass the burden of these costs from Pacific to its local exchange customers. In addition, both GTE and SBC suggest a national pooling of shared and carrier-specific costs, with the pool administered by a third party designated

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<sup>4</sup> NPRM, ¶¶ 215 and 222.



by the FCC or the North American Numbering Council.

As stated in our initial comments, California opposes mandated surcharges for number portability cost recovery because we prefer to allow carriers flexibility to recover their share of direct number portability costs without the administrative burden of numerous line item charges on customer bills. We believe that allowing this flexibility in a competitive local exchange market will give carriers an incentive to keep number portability costs to a minimum and absorb a reasonable portion of these costs rather than shifting them automatically and completely to their customers. We overwhelmingly oppose any national pooling of costs as proposed by SBC and GTE because many shared and carrier specific costs may be incurred at the statewide level and should therefore be allocated at the state level only. As we stated in our earlier comments, states should be allowed to decide the issue of cost recovery from end-use customers of incumbent LECs and other carriers, particularly if state databases are employed.

On this point, California wholeheartedly agrees with the comments of the New York Department of Public Service, the Florida Public Service Commission, and MCI, which all state that while allocation of costs to carriers may be set by the FCC, cost recovery from carriers should be left to the states.

California also agrees with the comments of AT&T, MCI and MFS who assert that incumbent LECs should not be able to recover their portion of LNP

costs from other carriers because each carrier should pay directly for their portion of LNP costs.

California endorsed this same principle in our opening comments where we stated that carriers should pass their specific number portability costs to end-users only, and not to other carriers, because this would circumvent efforts to ensure competitive neutrality. We further agree with these carriers that the FCC should preclude incumbent LECs from recovering number portability costs through increases in charges to other carriers for bottleneck services.

## **V. PRICE CAP TREATMENT**

### **A. States Should Retain Authority Over Exogenous Costs**

The FCC tentatively concludes in the NPRM that carriers subject to price cap treatment should be allowed to treat carrier-specific number portability costs they incur as exogenous costs.<sup>5</sup> In its initial comments, Pacific interprets exogenous to mean "recoverable," and proposes that the FCC include new long-term number portability rate elements in the current Common Line basket. Pacific suggests these costs be updated annually to insure LECs can recover these costs as subscribers change to other providers.

California disagrees with Pacific's interpretation that "exogenous" equates to "recoverable". We believe that individual states should retain the authority to

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<sup>5</sup> NPRM, ¶ 230.

determine if a cost is actually exogenous and how it should be recovered under any relevant price cap mechanism. For example, in California, defining a cost as exogenous is only one element in determining whether that cost is recoverable under our price cap formula.<sup>6</sup> In our initial comments, we agreed with the FCC's tentative conclusion regarding price cap treatment insofar as it pertains to carriers subject to federal price caps. The FCC should leave to the states the determination if costs under state price cap mechanisms are exogenous, and if they are, to what extent and how those costs are recoverable.

## **VI. CONCLUSION**

As stated, the CPUC urges the FCC to leave certain aspects of long-term number portability cost identification and recovery to the states. Coordinated state and federal efforts will ensure competitive neutrality in number portability

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<sup>6</sup> The California Commission twice has declined to authorize recovery of utility expenses associated with natural disasters (floods in Los Angeles, the Oakland hills fire). The CPUC determined that the utilities' management had an incentive to choose the best insurance contract and to provide for recovery of these expenses would make the ratepayers the insurance carrier.

cost recovery by developing a national framework that draws upon individual state expertise and knowledge to ensure fair competition in the state or region.

Dated: September 13, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Charlene D. Lundy, hereby certify that on this 13th day of September, 1996, a true and correct copy of the foregoing COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING in CC 95-116, RM 8535, was mailed first class, postage prepaid to all known parties of record.



Charlene D. Lundy